

BRAFMAN & ASSOCIATES, P.C.

ATTORNEYS AT LAW

256 FIFTH AVENUE, 2ND FLOOR

NEW YORK, NEW YORK 10001

TELEPHONE: (212) 750-7800

FACSIMILE: (212) 750-3906

E-MAIL: ATTORNEYS@BRAFLAW.COM

BENJAMIN BRAFMAN

MARK M. BAKER
OF COUNSEL

MARC A. AGNIFILO
OF COUNSEL

ZACH INTRATER
OF COUNSEL

ANDREA L. ZELLAN

JACOB KAPLAN

TENY R. GERAGOS
ADMITTED IN NY & CA

STUART GOLD

December 6, 2021

VIA ECF

The Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Ng Chong Hwa a.k.a Roger Ng, 18 Cr. 538 (MKB)

Dear Chief Judge Brodie:

We write with respect to the above-captioned case to (i) provide the Court with an update on open discovery issues and disclosure of Section 3500 material, (ii) ask about certain trial logistics, and (iii) ask the Court's indulgence to submit a short letter once we receive certain information from the Government regarding an issue concerning the money laundering count as it relates to violations of Malaysian law.

1. Open Discovery Issues and Section 3500 Material

First, we brought to the Court's attention on March 17, 2021, that Goldman Sachs was in the possession of multiple of [REDACTED] personal electronic devices. (ECF 67.) The Government received these devices apparently around May of 2021. As of today, we have received the contents of one of the devices. As to the remaining devices, the Government informed us today that they expect to produce data from two BlackBerry devices next week. There is one remaining device ("the Nokia device") that is still in process. We request that the Court order the Government to allow Counsel to inspect the Nokia device in person until such time as the FBI can decrypt that data, as well.

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Second, as the Court will recall, the Court's September 3, 2021, Order stated that "the Court urges the Government to consider disclosing all Section 3500 material to counsel and Ng at least six weeks or as soon as practicable in advance of trial." We note that six weeks before jury selection is tomorrow, Tuesday December 7, 2021. So far, the defense has received Section 3500 material from witnesses that are unlikely to be testifying at this trial. To the extent the Government knows which witnesses it intends to call, we ask that it provide Section 3500 material as to those witnesses six weeks in advance of trial per the Court's Order.

2. Trial Logistics

In terms of trial logistics, we ask the Court if it has views on the following topics:

- Trial hours and days sitting; at one point the Court indicated it may want to sit from 9:30 am to 2:30 pm. That schedule is fine with defense counsel but we defer to the Court's preference;
- Courtroom—will we be sitting in the ceremonial courtroom or in the Judge's courtroom?
- What are the current COVID protocols in the EDNY, including, but not limited to attorney mask-wearing, juror mask-wearing, asking vaccination status, disclosing vaccination status, etc.
- Will there be access to courtroom outside of trial hours?
- Will there be access to an attorney room outside of trial hours?

Both parties request the opportunity to do a walk through of the courtroom prior to trial to better understand the current logistics.

3. Issue of Malaysian Law in Regard to the Money Laundering Count

The Government previously provided to defense counsel proposed jury instructions as to three Malaysian crimes; two of which are contained in the Malaysian Anti-Corruption Commission Act of 2009 and one of which is contained in the Malaysian Penal Law. In our call with the Government today, we asked the Government if the Grand Jury voted these specific Malaysian charges as part of the Money Laundering count, and the Government indicated – which we appreciate – that it would get back to us on this question. Based on the Government's answer, it may be that we ask to file a short letter brief on this point, as it impacts our client's Fifth Amendment right to be charged by a Grand Jury as to that aspect of the Money Laundering count.

BRAFMAN & ASSOCIATES, P.C.

Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'MA Agnifilo', written in a cursive style.

Marc A. Agnifilo, Esq.

Zach Intrater, Esq.

Teny R. Geragos, Esq.

Jacob Kaplan, Esq.

cc: Counsel for the Government (via ECF and email)